IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8143 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHANUBHAI JAYRAMBHAI MALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8143 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 22/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. MR Prajapati for the

petitioner detenu and ld. AGP Ms. HB Punani for the other side.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 25.06.2004 passed by the Police Commissioner, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA ACt.

3. The grounds for detention supplied to the detenu petitioner indicate that the petitioner was found involved in solitary single offence punishable under Sections 66(1)B, 65AE, 81, 116B of the Bombay Prohibition Act registered with Prohibition Station (East) on 24.06.2004. It is recorded by the authority that the petitioner is a "boot-legger" and is involved in the activities dangerous to the society. It also transpires that the petitioner was arrested on the same day and when he was in police custody under the orders of remand granted by the competent Judicial Magistrate, order under challenge came to be passed.

4. The petitioner has challenged the legality and validity of the order of detention on number of grounds as mentioned in the memo of the petition. Ld. counsel Mr. Prajapati for the petitioner, has taken this Court through the contentions raised in the petition. However, he has focussed his arguments mainly on three grounds. The first ground pressed into service by ld. counsel Mr. Prajapti is that the petitioner has been wrongly branded as "bootlegger" and his activities are dangerous to maintenance of public order, as he was involved in solitary offence under Bombay Prohibition Act. The second ground pressed into service is that as per the settled legal position of the decision of the Apex Court in the case of Sohanlal Surajram Visnoi v/s State of Gujarat & Ors., 2004(2) GLR 1051, the impugned order of detention requires to be quashed as the case the present case is squarely covered by the ratio of the aforesaid decision.

5. I have gone through the above-cited decision. For the sake of convenience, I would like to quote relevant paras 4 & 5 of the said decision:-

> "4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution are not to apply to preventive

detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.

5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A. Act and only one offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949. Whereas in Special Civil Application No.825/2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

6. The next point pressed into service by ld. counsel appearing for the detenu is that there was no need to pass order of preventive detention because as on the date of passing of detention order, the detenu was under police custody, on the hypothesis that he would apply for bail and would be released on bail and would continue same and similar activities of bootlegging activities. This Court has turned down such orders in more than one cases and in support of submission, ld. counsel has placed reliance on the decision in the case of Amritlal & Ors. v/s Union Govt. through the Secretary, Ministry of Finance & Ors, reported in AIR 2000 SC 3675. I have gone through the cited decision and in my view, the ratio propounded in the cited decision would squarely apply to the facts of the present case and on this ground also, the impugned order of detention requires to be quashed and set aside.

7. In number of cases, this Court has consistently placed reliance on the ratio of the decision in the case

of Amrutlal & Others v/s Union of India, Through Secretary, Ministry of Finance & Ors., AIR 2000 SC 3675 and has quashed the order of detention where detenu on the date of passing and/or execution of detention order, was either in judicial or in police custody. The reason that there is "likelihood to be released on bail", is different from "likelihood of his moving application for bail". In the cited decision, detenu was in custody. In these facts and circumstances, ratio of the decision in the case of Vinod Singh V/s District Magistrate, Dhanbad, AIR 1986 SC 2090 also would help the present petitioner-detenu. So, on this sole ground, impugned order of detention requires to be quashed.

So, accepting the ratio and reasons assigned by this Court in the above-cited decisions, impugned order of detention requires to be quashed and set aside without entering into the merits of the other contentions raised in the petition.

8. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 25.06.2004 passed by the Police Commissioner, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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